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09/920,294	08/02/2001	Rudolf Ehrmaier	951/50213	3900

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EXAMINER

BURCH, MELODY M

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/920,294

Applicant(s)

EHRMAIER ET AL.

Examiner

Melody M. Burch

Art Unit

3683

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 10 December 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 December 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because the figure incorporates two embodiments into one figure. On pg. 4 of the remarks Applicant states "In a first embodiment, the means 16 is a key button, and in a second embodiment, the means 18 includes a holding shaft for a magnetic card". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: element 19. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

### *Claim Objections*

4. Claims 1-5 are objected to because of the following informalities: The phrase "said operating parameter" in line 3 from the bottom of claim 1 should be changed to --said at least one specified operating parameter-- to maintain consistent terminology

similar to that recited in lines 4-5. Appropriate correction is required. Claims 2-5 are objected to due to their dependency from claim 1.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claims 1 and 6. The phrase "startable without a mechanical key" as first claimed in lines 2-3 of claim 1 is indefinite. It is unclear how the vehicle is startable without a mechanical key in the embodiment including the card 19 since in the last four lines of paragraph [0013] it is stated that inserting the card or "key" into the holding shaft corresponds to leaving a key in the ignition which, as disclosed on pg. 6 lines 1-2, results in the parking brake being not engaged, enabling movement or starting of the vehicle and since the card 19 is, in essence, a mechanical key that houses electronic information.

Re: claims 4 and 5. In claims 4 and 5 it is claimed that the means for arbitrarily preventing comprises a holding shaft. However, in paragraph [0013] of the instant application it is disclosed that the arbitrary prevention of the automatic activation of the parking brake is triggered by inserting the device in the holding shaft or card insert 18. Therefore, based on the specification, the means for arbitrarily preventing includes the

insertion of the authorization verification device into the holding shaft as set forth in claim 9 and not simply the holding shaft itself.

Claims 2, 3 and 7-9 are indefinite due to their dependency from claims 1 and 6.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application in view of WO 00/37836.

Re: claims 1 and 6. The prior art discloses an electronic control unit for automatically activating a parking brake in a motor vehicle startable without a mechanical key (or an electronic authorization verification device considered to be equal to a conventional key system as disclosed in lines 2-4 of paragraph [0005]), wherein the electronic control unit automatically activates the parking brake in dependence on at least one specified operating parameter of the motor vehicle including an open driver's door or an empty driver's seat as disclosed in the last line of pg. 2 and the first line of pg. 3. WO 00/37836 teaches in lines 13-14 of the abstract the use of automatically engaging the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of the admitted prior art

to have included the shutting off of an internal combustion engine, as taught by WO 00/37836, in order to provide an additional means of automatically applying the brakes under emergency conditions or as means of safeguarding against operator forgetfulness.

Re: claims 2, 3, 7, and 8. The admitted prior art shows the limitation wherein the electronic control unit includes means or door sensor and seat sensor/switch for arbitrarily preventing an automatic activation of the parking brake, the means being arbitrarily triggerable by a user of the motor vehicle (closing the door or sitting in a seat).

9. Claims 4, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application in view of WO 00/37836 as applied to claims 2 and 7 above, and further in view of DE-19801064.

Re: claims 4, 5, and 9. The admitted prior art discloses the interaction of the vehicle user with door or seat sensors/switches as a means of triggering the vehicle condition of arbitrarily preventing the automatic application of the parking brake. DE-19801064 teaches the use of an electronic authorization verification device 9 having a wireless code transmission operatively arranged in the motor vehicle and being inserted into a holding shaft 2 for triggering arbitrarily a vehicle condition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the means of arbitrarily preventing automatic application of the parking brake of the admitted prior art, as modified, to have included the insertion of an authorization verification device into a holding shaft, in view of the teachings of DE-19801064, in

order to provide an alternate and well-known means of triggering a particular vehicle condition.

***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 09/920293. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 2 of the instant application and claims 1 and 5 of the copending application claim an electronic control unit for automatically activation a parking brake of a vehicle startable without a mechanical key and means for arbitrarily preventing the automatic activation of the parking brake. Claim 3 of the instant application and claims 2 and 6 of the copending application claim the key button in the form of an OFF switch. Claim 4 of the instant application and claims 3 and 7 of the copending application claim the electronic

authorization verification device, similarly claim 5 of the instant application parallels with claim 4 of the copending application. Claims 8, 9, and 10 of the copending application are obvious over claims 6-9 of the instant application in view of WO 00/37836.

WO 00/37836 teaches in lines 13-14 of the abstract the use of automatically engaging the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the operating parameter to have been the shutting off of an internal combustion engine, as taught by WO 00/37836, in order to provide a means of determining an appropriate time to apply the brakes to permit safe deceleration of the vehicle.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

12. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. With regards to the double patenting rejections, the terminal disclaimer was not submitted in paper no. 8, therefore, the double patenting rejections have been maintained.

#### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mmb 2/24/03  
mmb  
February 24, 2003



2/24/2003  
MATTHEW C. GRAHAM  
PRIMARY EXAMINER  
GROUP 310